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No. 74-850

In the Supreme Court of the United States

OCTOBER TERM, 1975

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, PETITIONER

v.

WILLIAM G. WEBER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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1. In support of the judgment of the court of appeals sustaining the district court's order providing for the blanket reference of all social security cases to a United States magistrate to prepare a recommended decision, *amicus curiae* contends that in the Federal Magistrates Act Congress "wanted to afford the District Courts maximal room to experiment with the utilization of magistrates and to tailor their employment to the particular problems and requirements of the given court" (Br. 19).[1] In order to avoid what it perceived to be possible constitutional

[1] As *amicus* correctly points out (Br. 2-5), the fact that respondent is not appearing in this Court in defense of the judgment of the court of appeals does not make this any the less a "case or controversy" within the meaning of Article III of the Constitution. See, *e.g.*, *United States* v. *Lovett*, 328 U.S. 303, 306-307; *Granville-Smith* v. *Granville-Smith*, 349 U.S. 1, 4; *Commissioner of Internal Revenue* v. *Stidger*, 386 U.S. 287; *Cheng Fan Kwok* v. *Immigration and Naturalization Service*, 392 U.S. 206, 210.

questions with respect to the authority of magistrates to perform judicial functions,[2] and in view of the experimental nature of the Act, Congress imposed numerous specific limitations upon the functions that magistrates could perform. Accordingly, while district courts have substantial authority to use magistrates, it is not open-ended or "maximal."

Amicus concedes (Br. 38) that, throughout the extensive legislative consideration of the Federal Magistrates Act, "Congress did not specifically mention social security cases" as one of the tasks that magistrates were authorized to perform. Nor, indeed, has *amicus* found any reference in the legislative history of the Act to any congressional intent to permit magistrates to perform essential elements of the review of administrative decisions that the courts traditionally have performed. Congress simply did not contemplate in 1968 the widespread use of magistrates which the district court's order in this case involves; rather, it was creating a novel institution to which it assigned only limited functions.

Amicus notes that in later congresses some senators apparently have assumed that magistrates may be authorized to handle social security cases (Br. 23-24, 38-39, referring to S. Rep. No. 92-1065, 92d Cong., 2d Sess. 3 (1972)). But even the views of a subsequent congress are entitled to little weight in interpreting the enactments of an earlier congress; *a fortiori* views expressed by individual members of a subsequent

[2] *Amicus* states (Br. 9) that he believes that petitioner's position "is explicable solely in terms of his (or the Department of Justice's) feeling that the broader interpretation given the Federal Magistrate's Act by most of the lower courts might offend Article III," and then argues at some length (Br. 9-17) that interpreting the Federal Magistrates Act as authorizing the magistrates to perform the function involved in this case is constitutional. As *amicus* recognizes (Br. 9), however, we make no claim that authorizing magistrates to perform this function would be beyond the power of Congress. Our sole contention is that in the Federal Magistrates Act Congress has not authorized the routine delegation of this function to magistrates.

congress shed little light, if any, upon what the earlier congress meant.[3] See, *e.g.*, *United States* v. *Philadelphia Nat'l Bank*, 374 U.S. 321, 348-349; *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 132.[4]

2. *Amicus* makes no attempt to answer our argument (Pet. Br. 23-29) that, if General Order No. 104-D constitutes a reference of social security cases to magistrates to serve as special masters, it is invalid under Rule 53 of the Federal Rules of Civil Procedure. Instead, *amicus* contends (Br. 25) that the order should not be judged under the standards of Rule 53 because in preparing recommended decisions in social security cases "the magistrate is not acting as a special master but is performing one of the other duties he has been authorized to perform by the Act and the appointing court." As we have shown (Pet. Br.

[3] The statements to which *amicus* refers were made not in connection with any proposed legislation bearing directly on the permissible functions of magistrates, but in a report of the Senate Judiciary Committee on a House-passed bill increasing the limits on magistrates' salaries. See 28 U.S.C. (Supp. III) 634(a). The House Committee Report did not refer to the handling of social security cases by magistrates. See H.R. Rep. No. 92-1037, 92d Cong., 2d Sess. (1972).

[4] Accordingly, the recent testimony of Judge Metzner concerning a pending bill (S. 1283, 94th Cong., 1st Sess. (1975)), quoted by *amicus* (Br. 24-25), is of little assistance in discerning the intent of Congress in 1968. In any event, the bill itself undermines *amicus'* position that the Act already vests courts with "maximal" authority to use magistrates. In revising 28 U.S.C. 636(b)(1) so as to authorize explicitly the referral of "any pretrial matter" to a magistrate for recommended disposition subject to *de novo* review by the judge upon request, the bill excepts "motions which are dispositive of the litigation"; yet social security cases typically are disposed of by precisely such a motion, *i.e.*, one for summary judgment. That the bill would not merely clarify existing law but would give courts new authority to use magistrates is indicated by a provision that would authorize a judge to designate a magistrate to conduct evidentiary hearings and make recommendations for the disposition of applications for post-trial relief, thereby overruling this Court's construction of the Act in *Wingo* v. *Wedding*, 418 U.S. 461.

24), however, in preparing such recommended decisions the magistrates are performing the same functions they would perform if specifically designated as special masters. The fact that General Order No. 104-D does not designate the magistrate's role as that of a special master is immaterial; as *amicus* recognizes (Br. 30), "[i]t is not the label that counts; it is the substance."

Amicus also contends (Br. 34-38) that, to the extent the Magistrates Act conflicts with Rule 53, it supersedes it. The Magistrates Act explicitly provides, however, that service by magistrates as special masters shall be "pursuant to the applicable provisions of * * * the Federal Rules of Civil Procedure * * * ." 28 U.S.C. 636(b)(1). Had Congress intended that Rule 53 would not govern a magistrate's service as a special master, it would hardly have explicitly imposed the contrary requirement, as it did in 28 U.S.C. 636(b)(1). More likely, had Congress intended the Act to override the Rule, it would have included a provision similar to that in a pending bill to amend the Magistrates Act (see n. 4, *supra*), which would amend Section 636(b) to permit magistrates to serve as special masters in civil cases "without regard to the provisions of rule 53(b) * * * ," but only upon the consent of the parties.

Respectfully submitted.

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